MALAYAN UNION REPORTS.

CHEW ENG PENG v. MAH KIM LONG.

[Original Civil Jurisdiction (Evans, J.) July 5, 1947]

Rent and Charged Lands (Restriction) Enactment 1940 — Validity of notice to quit given prior to landlord's application to Rent Assessment Board for permission to bring action for ejectment— Landlord and Tenant.

In this case, the plaintiff, who was the landlord of certain premises of which the defendant was the tenant, gave notice to quit to the defendant in accordance with the terms of the tenancy agreement on the 31st of December 1945 to terminate on 31st March 1946. Later the plaintiff applied to the Rent Assessment Board and the application was heard on 21.7.47. The Board approved the application on condition that the application for ejectment be made after 17.8.47. Subsequently the matter was reviewed by the Board and the earlier decision confirmed by it. On the 2nd of December 1946 the plaintiff began proceedings for ejectment. The defendant admitted the facts but contended that the notice to quit given was invalid because it was given prior to the plaintiff's application to the Rent Assessment Board.

Held, that the notice to quit given was valid, as it was not necessary to get the permission of the Rent Assessment Board before giving the notice to quit.

Cases referred to :—

(1) *Wagner v. Tan Eng Yeow* (1947) M.L.J. 34.

(2) *Ives v. Willans* (1894) 2 Ch. 478.

(3) *Shuter v. Hearse* (1922) 1 K.B. 438.

(4) *Felce v. Hill* 92 L.J. K.B. 974.

(5) *Keeves v. Dean* (1924) 1 K.B. 685.

CIVIL SUIT.

S. K. Das for the Plaintiff.

H. Y. Teh for the Defendant.

Evans, J. : — The plaintiff in this case is suing as landlord for the ejectment of the defendant, who has admitted all the facts regarding the tenancy, the notice served upon him, and the permission obtained by the landlord from the Rent Assessment Board to bring these proceedings. His defence is a point of law only. He contends that the notice given is invalid because it was given prior to the plaintiff's application to the Board.

The relevant facts are that plaintiff gave notice to quit to the defendant in accordance with the terms of the tenancy agreement on 31.12.45 to terminate on 31.3.46. On the date not stated but admitted to be subsequent to the expiry of the notice, the plaintiff applied to the Rent Assessment Board and that application was heard on 21.7.46. The Board approved the application on condition that the application for ejectment be made after 17.8.46. The matter was reviewed by the Board and the previous decision affirmed on 19.9.46. On 2.12.46 these proceedings were at length begun.

The defendant's contention depends on the wording of the Rent and Charged Lands (Restriction) Enactment 1940 and on a decision of the Chief Justice in the case of *Wagner v. Tan Eng Yeow*[1]. The notice to quit is, he says, a step towards ejecting the defendant and could not be validly taken without the permission of the Board. Section 7 of the Enactment reads :—

> No landlord shall without the permission of the Board in writing eject or apply to any Court for an order for the ejectment of or take any step towards ejecting his tenant from any premises to which this Enactment applies: Provided that this section shall not apply to ejectment for nonpayment of rent where rent at a lawful rate has been in arrear for fourteen days.

The plaintiff cited the definition of "step" in *Stroud's* Judicial Dictionary, and referred to *Ives v. Willans*[2]. In both "step" is used in connection with "proceedings", it is not so used here and the references are not strictly apposite. They are somewhat analogous and they certainly draw a distinction between acts between the parties and a step in judicial proceedings in Court. In section 7 the Legislature has used the word "eject" in various forms four times always, it appears and must be assumed, with the same meaning. "Ejectment" is used twice and looking at the dictionary to which Mr. Das has referred, ejectment is defined as follows :— "Ejectment generally means an Action for the Recovery of Land". That is how I should have understood it. The Action of Ejectment is one of the eldest and commonest forms of action in the English Law. Ejectment usually refers to court proceedings, it is not like eviction. That being so, the cases to which Mr. Das refers come much nearer to the point.

In the case of *Wagner v. Tan Eng Yeow* the learned Chief Justice said :—

> As I have already stated, the first plaintiff-appellant was entitled to issue the notice to quit without the permission of the Rent Assessment Board as the first step towards ejecting the defendant-respondent, because rent had been in arrears for more than fourteen days. The question is whether the first plaintiff-appellant in accepting rent up to, but not beyond, the period of the notice to quit waived his right to proceed with the ejectment proceedings without the permission of the Rent Assessment Board.

The defendant emphasises the expression "*as the first step towards ejecting the defendant*" and states that on an inference drawn from these words cases have been struck out, though none such has been reported. In that case the landlord gave notice on 5.2.46 to

terminate on 15.3.46, the rent then being four months in arrears. This last fact brought the case within the proviso to section 7, and exempted the landlord from the curtailment of his rights which that section inflicts. Not only the notice was then valid but so were all proceedings in ejectment and the leave of no board was required. The question of whether the giving of the notice was one of the rights of the landlord which the section took away did not arise; and such provisions restricting private rights should in general be interpreted strictly. The landlord had all his normal legal rights. The question might be whether the subsequent payment of rent before action brought vitiated the notice, or rather, took it out of the proviso. For this it was not necessary to decide whether the notice was a step or not, it was therefore not the *ratio decidendi* of the case. The Chief Justice was in effect saying in the above passage and might properly be read as saying, even assuming, as defendant alleges, the notice was a step yet it was valid by reason of the proviso. The Chief Justice went on to deal with it on the basis of waiver and to hold that the notice had not been waived by the subsequent receipt of rent. Even had he found it was waived, he would have implied that the notice without leave was good, otherwise there would have been nothing to waive.

The plaintiff relied on section 9 of the Enactment which he says necessarily implied under the Enactment the existence of what, in England, are called statutory tenants, tenants who no longer hold by agreement with, or by the will of the landlord but against his will by virtue of the Statute. This section does not contemplate indeterminable agreements, but rather tenancy by the Enactment and not by agreement. He cited certain English cases *Shuter v. Hearse*[3], *Felce v. Hill*[4] and *Keeves v. Dean*[5] in which the rights of such tenants and the incidents of their tenancy are defined. I think section 9 does contemplate such tenancies, but I think Mr. Das might have gone still further and have argued that the terminology, purpose and scope of the Enactment were similar to the English and purported to effect the same end by the same means. Moreover the cases cited were decided long before this Enactment was passed and were doubtless well known to the legislator. The introduction of similar tenancies here may well have been intended. Undoubtedly, the terms of section 7 must be read in the light of the other provisions of the Enactment, of the object of the Statute, of the mischief at which it is aimed, and of the remedy provided.

The Enactment was passed to prevent the exploitation to tenants by the exaction of exorbitant rents. A tenant under agreement however requires no such protection. Under a long lease the tenant has strong protection. The landlord cannot increase his rent or demand anything more or other than the rent thereby reserved. The monthly tenant has not the same protection. He is only safe and knows his rent for a month — or part of a month plus the length of notice. It is only when the lease comes to an end that the landlord could increase the lessee's rent as an alternative to turning him out. The monthly tenancy revives, and does not come to an end without notice. Ejectment follows on the termination of the tenancy, but a notice is not in all cases necessary to the termination which may result from effluxion of time. As a secondary object or as a means to prevent the raising of rents ejectment is controlled. There is no need to control the determination of tenancies, and the determination by effluxion of time cannot be controlled. The giving of notice is ambiguous. The tenant may accept it and go. The ejectment does not follow on the notice, but on the tenant's refusal to comply. It is this refusal the Enactment authorises provided the tenant observes the terms of the tenancy subject to such modifications as the Board may order.

Mr. Das went further and wanted me to say that notice was a necessary pre-requisite to application to the Board. If I had to choose between that proposition and the other proposition that the notice is a first step in ejectment, I must say I should prefer the former as more consonant with legal principles. The Board might well say to an applicant who has not given notice: it is no good your coming to us yet, you are not in a position to eject — or in Mr. Das' words — you have not yet a complete cause of action. They may not choose to do so. The board is above such legal refinements and follows no procedure and from its decisions there is no appeal. So I am not called upon to choose between these propositions, but for the above reasons I do not think that a notice to quit, which is an act between parties and a landlord's right, albeit, perhaps but partially operative, can be regarded as a step towards ejecting a tenant within the meaning of ejecting as used in section 7. The defendant's point of law fails.

There will be judgment for the plaintiff with costs, for possession postponed by agreement between parties on 31.8.47 and for *mesne* profits at the rate of $70.00 per month from 1.6.47.

Order Accordingly.